

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by the) FINDINGS, CONCLUSIONS,
Martin Luther King Jr. Outreach Center) AND DECISION
for an expansion of an existing)
community service use in a Residential) FILE NO. Z19-085CUP3
Two Family Zone)

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Martin Luther King Jr. (MLK Jr.) Outreach Center, has applied for a Conditional Use Permit (CUP) for an expansion of an existing community service use in a Residential Two Family (RTF) zone. This project consists of a 5,820 square-foot addition and renovation to the existing MLK Jr. Outreach Center, as well as a separate new dental clinic that will not exceed 4,000 square feet. On-site parking lot expansions are also included in the proposal.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: Martin Luther King Jr. Outreach Center
845 S. Sherman Street
Spokane WA 99202

Owner: City of Spokane
808 W. Spokane Falls Boulevard
Spokane WA 99201

Agent: ZBA Architecture (Mark King)
421 W. Riverside Avenue, Suite 860
Spokane WA 99201

Property Location: The site is located at 500 S. Stone Street, Spokane, Washington, and is designated as Tax Parcel No. 35211.4202.

Zoning: The property is zoned RTF (Residential Two Family).

Comprehensive Plan Map Designation: The property is designated as Institutional in the City of Spokane Comprehensive Plan ("CP")

Site Description: The site takes up an entire city block, and is approximately 3.86 acres in size. The site is flat. There are several buildings on the property, including the East Central Community Center (ECCC); the East Central Library; the Southeast Daycare Center; and a vacant building. The site is also improved with on-site parking areas.

Surrounding Conditions and Uses: The zoning to the north, south, east, and west of the parcel is RTF. The land to the north is improved with senior housing. The land to south, east, and west is developed with low-density, single-family homes.

Project Description: The ECCC is owned by the City of Spokane and is currently leased to and operated by the MLK Jr. Outreach Center. The Outreach Center has teamed up with the Community Colleges of Spokane to provide Early Headstart and Early Childhood Education Assistance. To house the Head Start program, MLK Jr. Outreach Center has proposed a 5,820 square-foot addition to the Community Center. The applicant is also proposing to construct a new building for a dental clinic to be operated by CHAS Health. On-site parking lot expansions are also a part of the proposal. The vacant building, located near the southwest corner of the site, will be demolished.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (SMC) 17C.110, Residential Zones; SMC 17C.320.080(F), Conditional Use Decision Criteria; and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: February 4, 2019
Posted: February 5, 2019

Notice of Application/Public Hearing: Mailed: March 15, 2019
Posted: March 18, 2019

Community Meeting: February 20, 2019

Public Hearing Date: April 11, 2019

Site Visit: April 10, 2019

SEPA: Pursuant to SMC 17E.050.070, this application is categorically exempt the requirements of the State Environmental Policy Act (SEPA). See Exhibit 6.

Testimony:

Ali Brast, Assistant Planner
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

Mark King
ZBA Architecture
421 West Riverside Avenue, Suite 860
Spokane, WA 99201

Alex Reynolds
City of Spokane Business and Developer
Services
808 West Spokane Falls Boulevard
Spokane, WA 99201

Exhibits:

1. Planning Services Staff Report dated 04/03/19
2. Application, including:

- 2A General application
- 2B Conditional use application
- 2C Supplemental information
- 2D Site plans
- 2E Notification map application
- 3. Pre-Development Conference Notes dated 08/09/18
- 4. Request for Comments letter dated 02/28/19
 - 4A Developer Services dated 03/13/19
 - 4B Accounting dated 03/04/19
 - 4C Avista dated 03/12/19
 - 4D Washington State Department of Ecology 03/13/19
- 5. Planning Services Director's Findings of Fact, Conclusions, and Conditions of Approval dated 02/07/19
- 6. SEPA Exemption dated 04/03/19
- 7. Notice of Community Meeting instructions dated 01/11/19
 - 7A Notice of Community Meeting
 - 7B Affidavit of Mailing dated 02/04/19
 - 7C Affidavit of Posting dated 02/05/19
 - 7D Affidavit of Removal of Public Sign dated 02/25/19
 - 7E Community Meeting Sign in Sheet
 - 7F Community Meeting Minutes
- 8. Notice of Application Instructions dated 03/15/19:
 - 8A Notice of Application & Public Hearing
 - 8B Affidavit of Mailing dated 03/15/19
 - 8C Affidavit of Posting dated 03/18/19
- 9. Public Comment dated 03/20/19
 - A Exhibits received at the hearing:
 - A-1 Hardcopy of Planning's PowerPoint presentation

FINDINGS AND CONCLUSIONS

To be approved, the proposed CUP must comply with the criteria set forth in SMC Sections 17G.060.170 and 17C.320.080(F). The Hearing Examiner has reviewed the proposed CUP and the evidence of record with regard to the application and makes the following findings and conclusions:

1. *The proposal is allowed under the provisions of the land use codes. See SMC 17G.060.170(C)(1).*

The project site is zoned RTF, a residential category. The uses allowed in the residential zones are shown on Table 17C.110-1. See SMC 17C.110T.001. Community Centers are identified in SMC 17C.190.420 as Community Service uses, an Institutional Category of Use. See *id.* The proposed dental clinic is also classified as a community service use, as it is will be run by CHAS, a non-profit health center. See Exhibit 1, p. 3. Both uses provide a local service to the people of the community. See *id.* As specified in SMC 17C.110.110(C), in the RTF zone an addition to an existing community service use of more than 1,500 square feet and/or a new building require a CUP and are processed as a Type III application. See *id.*; see also SMC

17C.110.110(C). Provided the standards for a conditional use are fulfilled, the proposal is allowed under the land use codes. The Hearing Examiner finds that this criterion is satisfied.

2. *The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property. See SMC 17G.060.170(C)(2).*

The proposed expansion of the community center is fairly modest, at 5,820 square feet, considering that the site consists of an entire city block. Similarly, the site has sufficient space to accommodate the proposed dental clinic, which will be housed in a 4,000 square foot building. The site is already developed with a community center, a daycare, a library, and a vacant building. The vacant building will be demolished to make room for the dental clinic. The expansion and the new dental clinic will be within the height restrictions for this residential zone and will honor the applicable setbacks. Some additional parking will be installed, but that will not dramatically change how the property is used. Overall, the changes to the site will be modest and consistent with the historic use of the site. The plans are well thought out and demonstrate that the modifications to the site will be attractive, complementary, and compatible with the surrounding land uses, consistent with Goal LU 5, Development Character.

The proposed improvements will enable the community center to provide additional social, educational, and health services to the surrounding community. And those services will be provided in conjunction with other service providers, such as the Community Colleges of Spokane and CHAS. In this way, the project facilitates public and private partnerships in providing health and human services and the development of social programs as contemplated in Policy SH 1.5, Public/Private Partnerships and Policy 5.2, Neighborhood-Level Health and Human Services. The project also provides an incentive to increase the number of neighborhood centers that provide dental, health, and human services, consistent with Policy SH 5.2. The kinds of programs offered at the community center certainly enhance the quality of life in the neighborhood as well, consistent with Policy N2.1, Neighborhood Quality of Life.

The project is also consistent with other goals and policies of the CP, as explained by the Staff. See Exhibit, 1, pg. 3-4. The policies identified by the Staff, and the Staff's analysis, are hereby incorporated by reference.

The Hearing Examiner concludes that the project is consistent with the goals and policies of the comprehensive plan and, therefore, this criterion is satisfied.

3. *The proposal meets the concurrency requirements of Chapter 17D.010 SMC. See SMC 17G.060.170(C)(3).*

The decision criteria for Type III decisions (such as a CUP) mandate that all proposals satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on February 28, 2019, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 4.

The city received limited responses to its request for comments. See Exhibits 4A-4D. Upon reviewing the comments, City staff noted that "...there were no departments or agencies that reported that concurrency could not be achieved." See Exhibit 1, p. 4. To the extent that there was a lack of substantive comments from departments and agencies with jurisdiction, the Hearing Examiner must conclude that concurrency standards are satisfied. See SMC 17D.010.020(B)(1); see also Exhibit 4.

A review of the record confirms that there is no substantive evidence that the project transgresses any concurrency requirements. There was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied.

The Hearing Examiner finds that the project satisfies the concurrency requirements of the SMC. Therefore, this criterion for approval of the CUP is met.

4. *If approval of a site plan is required, the property is suitable for the proposed use and site plan considering the physical characteristics of the property, including but not limited to size, shape, location, topography, soils, slope, drainage characteristics, the existence of ground or surface water and the existence of natural, historic or cultural features. See SMC 17G.060.170(C)(4).*

The site is rectangular in shape (being a city block) and is flat. There is nothing about the shape or topography that is problematic given the nature of the proposed use. The site is already being used for various public services, and has already proven to be suitable for such activities. Public services of this type should be located within the neighborhood being served and, as a result, the location is appropriate. The site is already fully developed and there is no evidence that there are issues concerning soils, drainage, or surface or ground water. There was also no evidence that there are historical or cultural features on the site. In addition, since the site is already fully developed, it is unlikely to be the location of such resources. It is also noteworthy that there was no comment from the Spokane Tribe of Indians raising any concerns in this regard.

The site is almost 4 acres in size, and generally has sufficient space to accommodate the use. However, the project design required some relief from the lot coverage limitations. As a result, the property owner, the City of Spokane, requested a minor modification to the lot coverage limitations from the Planning Director, per 17A.050.030. See Exhibit 5. The Planning Director approved an increase in allowable lot coverage by 1.7%, or 1,033 square feet. See *id.* The Planning Director issued findings and conclusions in support of that approval. See *id.* Those findings and conclusions were not questioned at the hearing on this proposal. In any case, the allowance for lot coverage does not materially impact the neighbors or make the project less compatible with the neighborhood, in the Hearing Examiner's opinion. The buildings and associated parking will still meet their required setbacks and height limitations. See *id.* The use does not change, the project is well-designed to fit the site, and the intensity of the use is basically the same. No change to the site topography is proposed.

The Hearing Examiner concludes that the site is an appropriate location for the proposed expansion of services. As a result, this criterion for approval is satisfied.

5. *The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary conditions can be placed on the proposal to avoid significant effect or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use. See SMC 17G.060.170(C)(5).*

On April 3, 2019, the Planning Department determined that the project was exempt from threshold determination and Environmental Impact Study (EIS) requirements of SEPA pursuant to SMC 17E.050.070. See Exhibit 6. The exemption determination was not questioned at the hearing, and there is no information in the record suggesting that the exemption decision was erroneous. By definition, a project which is categorically exempt from SEPA requirements is an

action "which does not significantly affect the environment." See Washington Administrative Code (WAC) 197-11-720. The Staff also points out that the proposed project is consistent in scale and setbacks with the surrounding residences, and that the project will be required to meet the standards set out in SMC 17C.110.500 through SMC 17C.110.575, Institutional Design Standards in Residential Zones. See Exhibit 1, p. 5. The Hearing Examiner agrees with the Staff's analysis and finds that this criterion for approval of the CUP is satisfied.

6. *The overall residential appearance and function of the area will not be significantly lessened due to the construction of utilities and infrastructure. The project will not result in the construction of improvements that are disproportionate to the residential household uses in the surrounding area. See SMC 17C.320.080(F)(1).*

The residential appearance and function of the area will not be negatively impacted by this project. The project will result in a 5,820 square foot addition to the existing community center, as well as the construction of a 4,000 square foot (approximately) dental clinic. However, the addition and building will be single-story structures, honoring the height and setback requirements of the zone. A vacant building will be demolished as well, providing additional room on the site for the dental clinic. While the project did receive approval from the Planning Director for increased lot coverage, it is 1.7% over the allowable coverage and was determined to be minor and that no person of average sensibilities would be negatively impacted by the adjustment. Ultimately, the project will not have a materially greater impact on the character of the neighborhood than the existing use.

The Hearing Examiner concludes that the project, as conditioned, is compatible with the surrounding neighborhood. The structures will have to satisfy the restrictions for institutional uses in residential areas. In addition, the site has been used for community services for many years and has not proven itself to be incompatible with the neighborhood, based upon this record. The nature of the use is not changing as a result of this project. Ultimately, the Hearing Examiner agrees with staff that the proposed improvements will not be disproportionate to the surrounding residences. See Exhibit 1, p. 5. The Hearing Examiner concludes that this criterion for approval is met.

7. *The proposal will be compatible with the adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks and landscaping. The proposal will mitigate the differences in appearance or scale through such means as setbacks, screening, landscaping and other design features. See SMC 17C.320.080(F)(2).*

The design of the project appears to be proportionate to the neighborhood, and appropriate given the characteristics of the site. See Exhibit 2D. The size, scale, and setbacks of the proposed buildings will be consistent with adjacent existing single-family homes. See Exhibit 1, p. 6; see also Paragraph 6 above. To further ensure compatibility with the residential neighborhood, the project will be required to satisfy the design standards for institutional uses in a residential area. See SMC 17C.110.500-575. In addition, a condition of approval, proposed by the Planning Department, requires the installation of street trees to provide additional screening of the new improvements from the right-of-way. See *id.*; see also Condition 2.

There was no testimony or other evidence suggesting that this project will be incompatible with the adjacent residential uses. In the Hearing Examiner's view, the proposed improvements will have no more impact on the neighborhood than the existing facility. Even if the use becomes more intense following the construction of the addition, expanded parking, and dental clinic, the

Hearing Examiner still believes the proposal is compatible with the neighborhood, for the reasons already discussed.

8. *The proposal will not have significant adverse impacts on the livability of nearby residential lands due to noise, glare, late-night operations, odors and litter, or privacy and safety issues. See SMC 17C.320.080(F)(3).*

There is no evidence in this record suggesting that livability will be diminished by this project. The project does not include elements that may cause unanticipated or undue light, glare, odor, or litter. See Exhibit 1, p. 6. The nature of the project would not appear to require any extraordinary measures for lighting. In any case, overhead lighting is required to be contained on the site per SMC 17C.110.520, Lighting. No late night operations are expected. See Exhibit 1, p. 6. No odor is anticipated, and trash will be picked up on the site regularly, consistent with existing operations. See *id.*

The project will not likely result in materially greater noise than arises from current activities. While there is a new play area proposed behind the community center, it is not directly adjacent to the street. See *id.* Additionally, the installation of new street trees can help mitigate any new noise on the site. See *id.* Finally, no concerns were raised about privacy or safety, and the Hearing Examiner cannot conceive of any such impacts, given the nature of the proposal.

Under the circumstances, the Hearing Examiner concludes that this criterion for approval has been satisfied.

9. *The proposed use is in conformance with the street designations of the transportation element of the comprehensive plan. The transportation system is capable of supporting the proposed use in addition to existing uses in the area, upon consideration of the evaluation factors provided in the municipal code. See SMC 17C.320.080(F)(4).*

This project does not create material burdens on the transportation system or on other public facilities. See Exhibit 1, p. 7. The proposal does not reduce the level of service on any adjacent street, according to the Staff. See *id.* The site has access to all City of Spokane public services, and will not require any additions to be made in order to fully accommodate the proposed site development. See *id.* As stated above, no department reported that public facilities were insufficient to support the project. See Paragraph 3 above.

The project is exempt from SEPA review. As a result, there was no traffic analysis undertaken and none was required. The nature of the use is not changing as a result of this project. The expansion of the facility was not significant enough to trigger review of impacts on the transportation system. Moreover, there was no evidence introduced at the hearing suggesting that this project would cause any genuine stress on the transportation system. There was no evidence presented to suggest that this project is incongruous with the transportation element of the comprehensive plan. The Hearing Examiner concludes that this criterion is satisfied.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed CUP subject to the following conditions:

1. Approval is for a CUP to allow the MLK Jr. Family Outreach Center to construct a 5,280 square-foot addition and renovation to the ECCC; to construct a new dental clinic, not to exceed 4,000 square feet in size; and to make associated parking lot improvements, all at the property located at 500 S. Stone Street. The project includes the demolition and removal of an existing building on the site. The project will be completed substantially as set forth in the plans and application on file in Planning and Development.
2. The project will be developed in substantial conformance with SMC 17C.110.500 through SMC 17C.110.575, Land Use Standards, Residential Zones, Institutional Design Standards, to maintain compatibility with, and limit the negative impacts on surrounding residential areas.
3. Consistent with 17C.210.090(F), the nonconforming site development standards, Planning requires the installation of street trees in the existing planting strips adjacent to the proposal. The applicant and the Planning Department will continue conversations with the City's Urban Forestry Department about supplying the trees for planting.
4. Per comments from Engineering, there is a six-inch cast iron water main located in vacated 6th Avenue. Per Ordinance C17798, July 13, 1964, the City has reserved an easement in the vacated area. No structures shall be constructed within the easement area.
5. Per comments from Avista, the site is served by Avista with both gas and underground electric distribution, some of which may run under some proposed improvements areas and/or new structures. If any facilities need to be relocated on the site, including light posts, the costs shall be incurred by the applicant.
6. This project must adhere to any additional performance and development standards documented in comments or required by the City of Spokane, the County of Spokane, the State of Washington, and any federal agency.
7. SMC 17G.060.240 regulates the expiration of this approval, and Table 17G.060-3 sets forth the time frame for the expiration of all approvals.
8. Prior to the issuance of any building or occupancy permits, the applicant shall submit evidence to this file that the property owner has signed and caused the following statement to be recorded with the Spokane County Auditor's Office.

COVENANT

Development of this property is subject to certain conditions on file with the City of Spokane Planning Department and the Office of the City of Spokane Hearing Examiner. The property may not be developed except in accordance with these conditions. A copy of these conditions is attached to this Covenant.

This statement shall be identified as a Covenant. The owner's signature shall be notarized.

9. This approval is subject to the above-stated conditions. By accepting this approval the Applicant acknowledges that these conditions are reasonable and agrees to comply with them. The filing of the above-required covenant constitutes the Applicant's written agreement to comply with all conditions of approval. The property may not be developed except in accordance with these conditions and failure to comply with them may result in the revocation of this approval.

DATED this 24th day of April, 2019.



Brian T. McGinn
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 17G.060.210 and 17G.050.

Decisions by the Hearing Examiner regarding conditional use permits are final. They may be appealed by any party of record by filing a Land Use Petition with the Superior Court of Spokane County. **THE LAND USE PETITION MUST BE FILED AND THE CITY OF SPOKANE MUST BE SERVED WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF THE ISSUANCE OF THE DECISION.** Pursuant to Revised Code of Washington (RCW) 36.70C.040(4)(a), the date of the issuance of the decision is three days after a written decision is mailed by the local jurisdiction. This decision was mailed on April 24, 2019. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 20th DAY OF MAY 2019 AT 5:00 P.M.**

In addition to paying any Court costs to appeal the decision, the ordinance requires payment of a transcript fee to the City of Spokane to cover the costs of preparing a verbatim transcript and otherwise preparing a full record for the Court.

Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.